

personal property which is available and needed to protect the interests of FmHA or its successor agency under Public Law 103-354.

(a) *Land plus assignments of income.* When land security is taken, it will be coupled with assignment(s) of uncommitted tribal, trust, or other income sufficient to cover loan repayments and payments to the reserve account.

(b) *Assignments of income without land security.* One or more assignments of income determined to be sufficient to cover the installment repayments plus reserve on the loan will be taken using exhibit C in this subpart N as a guide. The assignment may consist of one or more of the following:

(1) *Assignment of uncommitted income.* A general assignment of uncommitted tribal, trust, or other income, together with a BIA Subordination Agreement using exhibit D in this subpart N as a guide. A statement will be obtained from BIA on the amount of such income that will be available to cover repayments and payments to the reserve account.

(2) *Assignment of land sale or lease income.* An assignment of any net proceeds from the sale, lease, or other disposition of real estate, including minerals, timber, water, water rights, or other interests in real estate, if a real estate mortgage is not taken on such property.

(3) *Assignment of other income.* An assignment or pledge of other income or revenue.

(c) *Recordation of assignments.* Each assignment of income will be approved by BIA and recorded in the appropriate public records.

§ 1823.410 Appraisals.

The amount of loan funds used to acquire property will not exceed its market value as determined by FmHA or its successor agency under Public Law 103-354. Market value will be based on an appraisal made by authorized FmHA or its successor agency under Public Law 103-354 personnel, BIA appraisers or appraisers approved by the State Director. The value of any existing buildings that pass with the land will be deducted from the market value.

[43 FR 18161, Apr. 28, 1978]

§ 1823.411 Land rights.

Title to land acquired may, with the approval of the Secretary of the Interior or his designee, be in the name of the United States in trust for the tribe.

§ 1823.412 Loan docket.

The loan docket will consist of those items set forth in exhibit A. Forms and guides are available in all FmHA or its successor agency under Public Law 103-354 County Offices. Part of the docket will be prepared by the tribe with the assistance of BIA in accordance with exhibits A(1), B, C, and D of this subpart N. FmHA or its successor agency under Public Law 103-354 will provide items in exhibit A(2) of subpart N.

§ 1823.413 Loan approval.

State Directors are authorized to approve all loans except those in excess of \$500,000 which must first be authorized by the National Office. Information to be furnished the National Office will include the completed loan docket, proposed letter of conditions to be met by the applicant, any comments of OGC, and the State Director's recommendations. The State Director will forward an executed Form FmHA or its successor agency under Public Law 103-354 440-1, "Request for Obligations of Funds," to the Finance Office for each loan approved. If approval was authorized by the National Office, a copy of the memorandum authorizing approval will be attached to the Form FmHA or its successor agency under Public Law 103-354 440-3. An executed Form FmHA or its successor agency under Public Law 103-354 440-1 will be forwarded to the applicant on the same date the loan is approved, that is, on the same date it is forwarded to the Finance Office.

[39 FR 3662, Jan. 29, 1974, as amended at 41 FR 7488, Feb. 19, 1976]

§ 1823.414 Title to security property.

The applicant will provide evidence of title satisfactory to the FmHA or its successor agency under Public Law 103-354 for all property that will serve as security for the loan.

(a) *Real estate security—(1) Trust property.* The applicant will request BIA to furnish Title Status Reports to the

County Supervisor. The County Supervisor will review the reports in accordance with subpart B of part 1927 of this chapter. Form FmHA or its successor agency under Public Law 103-354 1927-13, "Waiver of Encumbrances, Exceptions, and Reservations," will be used as appropriate. The County Supervisor will ask the State Director for advice if necessary.

(i) If administrative closing requirements can be met, BIA will prepare the deeds and obtain the needed signatures. The County Supervisor will supply BIA with Forms 1927-1, "Real Estate Mortgage for (State)", and FmHA or its successor agency under Public Law 103-354 440-22, "Promissory Note (Association or Organization)." BIA will insert the appropriate land descriptions.

(ii) The partly completed real estate mortgage and note will be returned to the County Supervisor. The loan check can then be ordered and the loan closed. The mortgage and note will be completed and signed, but no funds will be disbursed.

(iii) A conformed copy of the note with the original mortgage and two copies will be forwarded to BIA. They will insert a certification on the mortgage and return it to the County Supervisor. BIA will also indicate that the deeds have been recorded and the priority of the Government's lien in a continuation of the Title Status Report. However, the certification about the lien priority may be made on the old Status Report if BIA prefers this.

(iv) The certified original mortgage will then be recorded by the County Supervisor in the county where the land is located if OGC determines that such recordation is necessary. Funds can be disbursed as soon as the mortgage is recorded or the determination is made that recordation is not necessary.

(2) *Nontrust land.* Title clearance will be obtained in accordance with subpart B of part 1927 of this chapter.

(b) *Rights of way.* The applicant will be responsible for obtaining adequate, continuous, and valid rights-of-way for operation, and maintenance of its property. The following documentary evidence will be furnished FmHA or its successor agency under Public Law 103-354.

(1) A copy of the form of right-of-way instrument to be used if it differs from Form FmHA or its successor agency under Public Law 103-354 442-20, "Right-of-Way Easement." Rights-of-way with restrictive provisions should be accepted only in very unusual circumstances. Whenever the form of the instrument differs from Form FmHA or its successor agency under Public Law 103-354 442-20 or contains special provisions that are required by either the applicant or the grantor, copies of such instruments will be submitted to the FmHA or its successor agency under Public Law 103-354 for review prior to acceptance and recording. Either specific rights-of-way containing a legal property description of a centerline description of the rights-of-way or general rights-of-way containing only a description of the tract or parcel of land affected, may be used.

(2) A certificate by a duly authorized official of the applicant that it has obtained and presently holds adequate and sufficient legal title to all rights-of-way, permits and other authorizations deemed necessary by the applicant and its attorney for an uninterrupted right-of-way for the operation and maintenance of the property. Use Form FmHA or its successor agency under Public Law 103-354 442-21, "Right-of-Way Certificate."

(3) An opinion by the applicant's attorney relating to the adequacy and legality of the rights-of-way covered by the right-of-way certificate. Use Form FmHA or its successor agency under Public Law 103-354 442-22, "Opinion of Counsel Relative to Rights-of-Way," to the extent possible.

(c) *Lien on water rights.* When a mortgage or an assignment will be taken on water rights, the applicant's attorney will furnish a statement regarding the nature of the water rights owned such as conveyance of title, appropriation and decree, application and permit, public notice of appropriation and use, and so forth.

(d) *Lien on chattel property.* When liens will be taken on chattel property, the following will be furnished:

(1) Description of the property for use in preparing security instruments.

(2) Form FmHA or its successor agency under Public Law 103-354 440-13,

“Report of Lien Search,” or similar form prepared in accordance with the State requirements prescribing the use of such form for Operating loans.

(e) *Disposition of title evidence.* All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed. The opinion of title or title insurance policy and any water stock certificates will be retained in the borrower's county office case folder.

[39 54 3662, Jan. 29, 1974, as amended at 56 FR 67472, Dec. 31, 1991]

§ 1823.415 Supervision and servicing.

Borrowers will be supervised in accordance with subpart A of part 1942 of this chapter. Loans will be serviced in accordance with subpart E of part 1951 of this chapter. The cooperation, assistance, and advice of appropriate BIA officials will be sought at all times.

[39 FR 3662, Jan. 29, 1974, as amended at 47 FR 52119, Nov. 19, 1982; 54 FR 47196, Nov. 13, 1989]

§ 1823.416 Check request and loan closing.

Before any loan can be closed, the District Director must notify the State Director in writing that all loan closing conditions have been met. Checks will be requested and loans will be closed in accordance with subpart A of part 1942 of this chapter.

[39 FR 3662, Jan. 29, 1974, as amended at 54 FR 47196, Nov. 13, 1989]

§ 1823.417 Civil rights.

Indian tribes, for the purpose of this subpart, are not subject to title VI of the Civil Rights Act of 1964 so long as the expected use of land acquired does not include operation of a facility which would be open to the public. Therefore, such tribes are not subject to part 1816 of this chapter.

§ 1823.418 State requirements.

Each State Director will, with the assistance of OGC, supplement this Subpart with State regulations, forms, worksheets, sample documents, and such other guidance as necessary to successfully carry out the program.

EXHIBIT A TO SUBPART N TO PART 1823— LOAN DOCKET ITEMS—LOANS TO INDIAN TRIBES AND TRIBAL CORPORATIONS

(1) The tribe with the assistance of BIA will provide the following:

SF 424.1: Application for Federal Assistance (For Non-construction).

Form FmHA or its successor agency under Public Law 103-354 1910-11: Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts. (O & 1C—Sign O);

Official audit report of the preceding 4 years including income and expenses;

List of tribal officers, including title and addresses and signature identifications;

Copy of tribe's constitution and bylaws or charter or other evidence of organization and rules of operation;

Legal services contract approved by BIA if a private law firm. A written statement will be provided when a BIA attorney performs the legal services.

Land Utilization Plan including:

(a) A short narrative description of why the land is being purchased, what use is to be made of it, and the annual net income expected to be derived from the land. If it has proven income record, that information should be included. If not, it should be so stated. If any development work is contemplated by the tribe, this should be explained, including assurance of the source of funds to carry out such development. If the land is to be operated by the tribe, this should be described, including assurance of availability of the necessary money to meet operating costs and method of management. If the land is to be leased, there should be a description of how it will be used and assurance that its intended use will conform to the overall land use pattern of the reservation or any variations justified; (b) Recommendation of BIA Soil Conservation Specialist.

Form FmHA or its successor agency under Public Law 103-354 440-34: Option to Purchase Real Property or similar purchase agreement containing the provisions of the option.

Form FmHA or its successor agency under Public Law 103-354 440-35: Acceptance of Option.

Form FmHA or its successor agency under Public Law 103-354 442-7: Operating Budget or Statement of Income and Expenses including income and expenses from all sources.

Resolution of Tribal Council or other governing body approving and providing for the proposed land acquisition and any actions necessary to carry it out, such authority to encumber real estate and waiver of immunity and, where legally necessary, evidence of any required tribal election or referendum. The resolution should substantially conform with Exhibit B.